Tee Wei Chiang v Great Eastern Life Assurance (M) Bhd (formerly known as Great Eastern Life Assurance (M) Sdn Bhd)

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCC-464–08 OF 2019
AHMAD FAIRUZ J
9 JULY 2021

Agency — Agency agreement — Termination — Whether plaintiff breached terms of agency agreement — Whether termination of agency agreement lawful — Whether inquiry/interview on allegation of misconduct conducted with adherence to principles of natural justice, openness and fairness — Whether acquittal of criminal charges against plaintiff by Court of Appeal absolved plaintiff from any blame or wrongdoing — Whether defendant ought to reinstate plaintiff — Whether plaintiff entitled benefits arising from agency agreement

This writ action was filed against the defendant ('GE') premised on the alleged breach of agency agreement by GE. In 2004, the plaintiff was appointed as an insurance agent GE by virtue of an agency agreement ('the agency agreement'). The plaintiff subsequently was designated as a unit sales manager and was later redesignated as a life insurance advisor. In 2013, GE received a written complaint from one of its customers, Madam Wong Kok Foong ('Madam Wong'), alleging that she had paid a large sum of money to the plaintiff to purchase seven policies issued by GE inclusive of personal accident ('PA') policies through the plaintiff. The plaintiff represented to her that the payment of premiums for the seven policies were one-off. Madam Wong subsequently discovered that she had to continue paying the premiums for the seven policies, and thereafter, Madam Wong lodged a police report against the plaintiff. Upon receipt of Madam Wong's complaint, GE suspended the plaintiff as an agent. GE also simultaneously suspended the payment of the commissions, overriding commissions and benefits due to the plaintiff. The plaintiff was then called in to the GE's head office for an interview in respect of the complaint made by Madam Wong. At the conclusion of the inquiry, GE made a decision to terminate the plaintiff's agency through a termination notice dated 8 January 2014. By virtue of the agency agreement being terminated, the plaintiff's appointments as unit sales manager and life insurance advisor were also terminated. Concurrent to GE's inquiry about Madam Wong's complaint, the plaintiff was also investigated and charged in the criminal court based on the police report lodged by Madam Wong. The plaintiff was convicted by the sessions court. The conviction was affirmed by the High Court but upon the plaintiff's appeal to the Court of Appeal, he was subsequently acquitted. After

being acquitted by the Court of Appeal, the plaintiff wrote a letter to the chief executive officer of GE seeking for his agency status to be reinstated based on the fact that since the plaintiff was acquitted by the Court of Appeal of his criminal charges, he was therefore absolved of any blame or wrongdoing. However, GE maintained its decision to terminate the plaintiff's agency hence the filing of the present suit. The plaintiff claimed that as a result of the unlawful action of GE in terminating the agency agreement and its refusal to pay the plaintiff the commissions, overriding commissions and benefits due to him under the agency agreement before and after the alleged wrongful termination, the plaintiff suffered loss and damages including but not limited to loss of income, reputation and mental anguish. The issues that had been identified to be tried were as follows: (a) whether the plaintiff has breached the terms of the agency agreement or the code of ethics and conduct in dealing with Madam Wong which resulted in the termination of the plaintiff's agency agreement; (b) whether GE's decision to suspend the plaintiff and the payment of the commissions, overriding commissions and benefits due to the plaintiff from June 2013 were made on unproven allegations of Madam Wong and without giving full credence to the plaintiff's version of events; (c) whether GE had the responsibility to conduct the inquiry/interview with adherence to the principles of natural justice, openness and fairness, and whether the inquiry/interview has been conducted in such a way; (d) whether the termination of the agency agreement by GE for the reasons stated in the notice dated 8 January 2014 was lawful; and (e) whether the plaintiff was entitled to the reliefs sought.

Held, dismissing the plaintiff's claim with costs:

(1) The answers provided by the plaintiff in his interview statement were very precise and could only come from him alone. There was no basis to agree with the contention that the plaintiff was in any manner 'fixed up' by DW1 during the course of the statement recording. It was also baseless to suggest that the answers given by the plaintiff in the interview statement were not his. It would be very difficult for anyone apart from the plaintiff to give such a clear account of how the events unfolded. There was no basis to suggest that the interview statement was obtained as a result of 'harassment, persistent pressure, questioning and accusation of wrong' as pleaded by the plaintiff (see paras 46–47).

(2) The complaint by the plaintiff was riddled with inconsistencies. Among the inconsistencies were the identification of who actually carried out the interview. In the statement of claim, the plaintiff had identified DW2 as the compliance officer who recorded the statement. However, in his witness statement, the plaintiff identified the recording officer as the DW1. The plaintiff also pleaded in his statement of claim that it was DW2 who asked him to sign the interview statement but in his witness statement, he said it was DW1 who asked him to do so. There were also

discrepancies in the pleadings and the plaintiff's witness statement when he complained about the manner he was treated during the interview. The discrepancies were material for the court's determination of the version of events that transpired on the day of the interview. The failure of counsel for the plaintiff to offer an explanation to the court on why such discrepancies occurred did not assist the case of the plaintiff (see paras 48 & 50–51).

(3) The relationship between GE and the plaintiff was a contractual relationship. It was not an employer and employee relationship. Therefore, there was no requirement for any domestic inquiry or internal human resource processes to be complied with by GE. GE's rights to terminate the agency agreement were contractually provided under the terms of the agency agreement. As such, once GE was of the view that the plaintiff committed an act that merited a termination of the agreement, GE was entitled to do so subject to giving the requisite notice period to the agent. In the current case, GE had done so by virtue of the letter dated 8 January 2014 (see paras 52 & 54).

(4) GE was convinced that the plaintiff had committed acts which violated the agency agreement and was satisfied with the outcome of their investigations on the plaintiff which showed a strong basis to confirm Madam Wong's complaint. As such, they were entitled to terminate the agency agreement between them and the plaintiff. As GE had the final say when determining there was a breach of the terms of the agency agreement, the court could not go beyond what was carried out by GE and their satisfaction on the results of their investigations (see paras 77–79).

(5) The plaintiff's argument that as a result of the acquittal by the Court of Appeal, he no longer had any criminal conviction to his name and he was therefore, entitled to be reinstated as an agent with GE and would be entitled to all the commissions as provided under the agency agreement was misplaced. The termination of the agency agreement was made based on the finding by GE that the plaintiff had breached the agency agreement. A person becomes an agent of GE upon the parties entering into an agency agreement. If to the assessment of GE the plaintiff was no longer fit and proper to act as its agent, GE could not be compelled to re-enter into an agreement with the plaintiff. As such, GE was at all times entitled to refuse any form of contractual relationship in the form of the agency agreement. The plaintiff was also not entitled to any benefits arising from the agency agreement as his termination was based on the proviso in cl 18 which expressly stated that no commission was entitled to be paid if the termination was based on a finding of 'wrongs' by GE (see paras 81, 83, 85 & 87).

(6) The issue raised by the plaintiff that it was wrong for GE to suspend the plaintiff before the investigation was completed was not a pivotal issue. GE was entitled to take steps to preserve its position in light of the serious allegations made against the plaintiff. There was a police report that was lodged together with the complaint. Therefore, it was not an unreasonable action to take. Further, the insurance industry was heavily regulated by the insurance industry regulator, Bank Negara. GE could not afford to take the issue lightly especially when agents were persons who interface with members of the public and were in a position of trust. It was only right that stern action was taken whenever any such allegations arise. Nevertheless, the issue of wrongful suspension was not specifically pleaded by the plaintiff. The plaintiff was therefore not entitled to raise the issue during trial (see paras 89–91).

(7) The burden of proof lay with the plaintiff to prove to this court that the termination was unlawful. However, the plaintiff had failed to prove its case on the required standard of a balance of probabilities. It was trite that GE had no duty to supplement the case of the plaintiff. GE on the other hand, was able to rebut the contention of the plaintiff. It followed that none of the remedies prayed for by the plaintiff was allowed (paras 93 & 101).

[Bahasa Malaysia summary

Saman ini difailkan terhadap defendan ('GE') atas alasan pelanggaran perjanjian agensi oleh GE. Pada tahun 2004, plaintif telah dilantik sebagai ejen insurans GE berdasarkan perjanjian agensi ('perjanjian agensi'). Plaintif kemudiannya telah dilantik sebagai pengurus jualan unit dan kemudiannya dilantik semula sebagai penasihat insurans hayat. Pada 2013, GE menerima aduan bertulis daripada salah seorang pelanggannya, Puan Wong Kok Foong ('Puan Wong'), mendakwa bahawa dia telah membayar sejumlah besar wang kepada plaintif untuk membeli tujuh polisi yang dikeluarkan oleh GE termasuk kemalangan peribadi ('PA') melalui plaintif. Plaintif menyatakan kepadanya bahawa pembayaran premium untuk tujuh polisi tersebut adalah sebanyak sekali sahaja. Puan Wong kemudiannya mendapati bahawa dia perlu terus membayar premium untuk tujuh polisi itu, dan selepas itu, Puan Wong membuat laporan polis terhadap plaintif. Selepas menerima aduan Puan Wong, GE menggantung plaintif sebagai ejen. GE juga pada masa yang sama menggantung pembayaran komisen, komisen overiding dan faedah-faedah yang perlu dibayar kepada plaintif. Plaintif kemudiannya dipanggil ke ibu pejabat untuk siasatan berkenaan dengan aduan yang dibuat oleh Puan Wong. Pada akhir siasatan, GE membuat keputusan untuk menamatkan agensi plaintif melalui notis penamatan bertarikh 8 Januari 2014. Berdasarkan perjanjian agensi yang ditamatkan, pelantikan plaintif sebagai pengurus jualan unit dan penasihat insurans hayat juga telah ditamatkan. Serentak dengan siasatan GE mengenai aduan Puan Wong, plaintif turut disiasat dan didakwa di

A mahkamah jenayah berdasarkan laporan polis yang dibuat oleh Puan Wong. Plaintif telah disabitkan oleh mahkamah sesyen. Sabitan itu disahkan oleh Mahkamah Tinggi namun selepas rayuan plaintif kepada Mahkamah Rayuan, dia kemudiannya dibebaskan. Selepas dibebaskan oleh Mahkamah Rayuan, plaintif menulis surat kepada ketua pegawai eksekutif GE memohon agar B status agensinya dikembalikan semula berdasarkan fakta bahawa sejak plaintif dibebaskan oleh Mahkamah Rayuan daripada tuduhan jenayahnya, oleh itu dibebaskan daripada sebarang kesalahan jenayah. Bagaimanapun, GE mengekalkan keputusannya untuk menamatkan agensi plaintif. Oleh yang demikian, saman ini difailkan. Plaintif menghujahkan bahawa akibat daripada C tindakan yang menyalahi undang-undang oleh GE dalam menamatkan perjanjian agensi dan keengganannya membayar komisen kepada plaintif, komisen overiding dan faedah yang terhutang kepadanya di bawah perjanjian agensi sebelum dan selepas penamatan yang dikatakan salah tersebut, plaintif telah mengalami kerugian termasuk tetapi tidak terhad kepada kehilangan D pendapatan, reputasi dan penderitaan mental. Isu-isu untuk dibicarakan adalah seperti berikut: (a) sama ada plaintif telah melanggar terma perjanjian agensi atau kod etika dan tatacara berurusan dengan Puan Wong yang mengakibatkan penamatan perjanjian agensi plaintif; (b) sama ada keputusan GE untuk menggantung plaintif dan pembayaran komisen, komisen overiding E dan faedah-faedah yang perlu dibayar kepada plaintif mulai Jun 2013 telah dibuat atas dakwaan Puan Wong yang tidak berasas dan tidak memberikan kepercayaan penuh kepada pembelaan plaintif; (c) sama ada GE mempunyai tanggungjawab untuk menjalankan siasatan/soalsiasat dengan mematuhi prinsip keadilan semula jadi, keterbukaan dan kesaksamaan, dan sama ada F siasatan/soalsiasat telah dijalankan sedemikian; (d) sama ada penamatan perjanjian agensi oleh GE atas alasan yang dinyatakan dalam notis bertarikh 8 Januari 2014 adalah sah; dan (e) sama ada plaintif berhak mendapat relif yang dipohon.

G **Diputuskan**, menolak tuntutan plaintif dengan kos:

(1) Jawapan-jawapan yang diberikan oleh plaintif dalam soalsiasat adalah sangat tepat dan hanya datang daripada dia sahaja. Tiada asas untuk bersetuju dengan hujahan bahawa plaintif dalam sebarang cara yang H 'ditetapkan' oleh DW1 semasa rakaman penyataan tersebut dibuat. Ianya juga tidak berasas untuk mengatakan bahawa jawapan yang diberikan oleh plaintif dalam kenyataan soalsiasat tersebut bukanlah miliknya. Adalah amat sukar bagi sesiapa selain daripada plaintif untuk memberikan keterangan yang begitu jelas tentang bagaimana kejadian I tersebut berlaku. Tiada asas untuk mengatakan bahawa pernyataan soalsiasat tersebut diperoleh disebabkan 'gangguan, tekanan berterusan, soalsiasat dan tuduhan salah' seperti yang diplidkan oleh plaintif (lihat perenggan 46–47).

(2) Hujahan plaintif adalah tidak konsisten. Antara yang tidak konsisten

ialah mengenai siapa sebenarnya yang menjalankan soalsiasat tersebut. Dalam pernyataan tuntutan, plaintif telah mengenal pasti DW2 sebagai pegawai pematuhan yang merekodkan pernyataan tersebut. Bagaimanapun, dalam kenyataan saksinya, plaintif mengenal pasti pegawai perakam sebagai DW1. Plaintif juga memplidkan di dalam pernyataan tuntutannya bahawa DW2 yang memintanya menandatangani pernyataan soalsiasat tersebut tetapi dalam kenyataan saksinya, dia berkata DW1 yang memintanya berbuat demikian. Terdapat juga percanggahan dalam pliding dan pernyataan saksi plaintif apabila dia menyatakan mengenai cara dia dilayan semasa temu duga. Percanggahan tersebut adalah penting untuk mahkamah menentukan tentang versi kejadian yang hari soalsiasat tersebut. Kegagalan peguam bela plaintif memberikan penjelasan kepada mahkamah mengapa percanggahan tersebut berlaku tidak membantu kes plaintif (lihat perenggan 48 & 50–51).

(3) Hubungan antara GE dan plaintif adalah hubungan kontrak. Ianya bukan hubungan majikan dan pekerja. Oleh itu, tiada keperluan untuk sebarang siasatan dalam atau proses sumber manusia dalaman dipatuhi oleh GE. Hak GE untuk menamatkan perjanjian agensi telah diperuntukkan secara kontrak di bawah syarat perjanjian agensi. Oleh itu, sebaik sahaja GE berpendapat bahawa plaintif melakukan tindakan penamatan perjanjian, GE berhak berbuat demikian tertakluk kepada penyerahan tempoh notis yang diperlukan kepada ejen. Dalam kes ini, GE telah berbuat demikian berdasarkan surat bertarikh 8 Januari 2014 (lihat perenggan 52 & 54).

(4) GE diyakini bahawa plaintif telah melakukan tindakan yang melanggar perjanjian agensi tersebut dan berpuas hati dengan hasil siasatan mereka terhadap plaintif yang merupakan asas kukuh untuk mengesahkan aduan Puan Wong. Oleh itu, mereka berhak untuk menamatkan perjanjian agensi antara mereka dan plaintif. Memandangkan GE boleh memutuskan penentuan pelanggaran syarat perjanjian agensi, mahkamah tidak boleh mencampuri perkara yang dijalankan oleh GE dan keputusan mereka mengenai hasil penyiasatan tersebut (lihat perenggan 77–79).

(5) Hujahan plaintif bahawa hasil dari pembebasan oleh Mahkamah Rayuan, beliau tidak lagi mempunyai sebarang sabitan jenayah terhadapnya dan oleh itu beliau berhak untuk dilantik semula sebagai ejen dengan GE dan berhak mendapat semua komisen seperti yang diperuntukkan. di bawah perjanjian agensi tersebut. Penamatan perjanjian agensi dibuat berdasarkan hasil siasatan GE bahawa plaintif telah melanggar perjanjian agensi. Seseorang hanya boleh menjadi ejen GE apabila pihak-pihak yang menandatangani perjanjian agensi. Sekiranya pada penilaian GE plaintif tidak lagi layak dan wajar untuk

bertindak sebagai ejennya, GE tidak boleh dipaksa untuk memasuki semula perjanjian dengan plaintif. Oleh itu, GE pada setiap masa berhak menolak sebarang bentuk hubungan kontrak dalam bentuk perjanjian agensi. Plaintif juga tidak berhak mendapat sebarang faedah dari perjanjian agensi tersebut kerana penamatannya adalah berdasarkan proviso dalam klausa 18 yang secara jelas menyatakan bahawa tiada komisen layak dibayar sekiranya penamatan itu berdasarkan penemuan 'kesalahan' oleh GE (lihat perenggan 81, 83, 85 & 87).

(6) Isu yang dibangkitkan oleh plaintif bahawa adalah salah untuk GE menggantung plaintif sebelum siasatan selesai bukanlah isu penting. GE berhak mengambil langkah untuk mengekalkan kedudukannya memandangkan terdapat aduan serius yang dibuat terhadap plaintif. Terdapat laporan polis yang dibuat dengan aduan tersebut. Oleh itu, ianya bukanlah satu tindakan yang tidak munasabah. Selanjutnya, industri insurans dikawal dengan ketat oleh pengawal selia industri insurans, Bank Negara. GE tidak boleh mengambil mudah isu ini terutamanya apabila ejen adalah orang yang berhubung dengan orang awam dan berada dalam kedudukan yang dipercayai. Sewajarnya tindakan tegas diambil apabila timbul sebarang dakwaan sebegitu. Namun begitu, isu penggantungan tugas yang salah tidak dirayu secara khusus oleh plaintif. Oleh itu, plaintif tidak berhak untuk membangkitkan isu ini semasa perbicaraan (lihat perenggan 89–91).

(7) Beban pembuktian adalah terletak pada plaintif untuk membuktikan kepada mahkamah ini bahawa penamatan perjanjian tersebut adalah salah di sisi undang-undang. Walau bagaimanapun, plaintif telah gagal membuktikan kesnya melebihi imbangan kebarangkalian. Adalah menjadi undang-undang mantap bahawa GE tidak mempunyai kewajipan untuk membantu kes plaintif. GE sebaliknya, boleh mengakas tuntutan plaintif. Oleh yang demikian, remedi-remedi yang dipohon oleh plaintif tidak dibenarkan (perenggan 93 & 101).]

Cases referred to

Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & 51 Others [2006] 1 MLJ 117, CA (refd)

Tindok Besar Estate Sdn Bhd v Tinjar Co [1979] 2 MLJ 229; [1979] 1 LNS 119, FC (refd)

Godfrey Philip D'Cruz (with Mak Jun Yeen) (Godfrey D'Cruz & Co) for the plaintiff.

Andrew Teh (with Tan Chong Pei) (Wong Lu Peen & Tunku Alina) for the defendant.

Ahmad Fairuz J:

INTRODUCTION

[1] This writ action was filed against the defendant ('GE') premised on the alleged breach of agency agreement by GE.

[2] After the completion of trial, this court found that the plaintiff failed to prove his case against GE. This is the grounds of judgment of this court.

BACKGROUND FACTS

[3] In 2004, the plaintiff was appointed as an insurance agent of GE by virtue of an agency agreement executed on 23 September 2004 ('the agency agreement').

[4] The plaintiff subsequently was designated as a unit sales manager on 1 January 2007. Then beginning 1 January 2011, he was redesignated as a life insurance advisor.

[5] In 2013, GE received a written complaint from one of its customers, Madam Wong Kok Foong ('Madam Wong'), alleging in essence that she had paid a large sum of money to the plaintiff to purchase seven policies issued by GE inclusive of personal accident ('PA') policies offered by Overseas Assurance Corp (M) Bhd ('OACM') through the plaintiff. The plaintiff represented to her that the payment of premiums for the seven policies were one-off. Madam Wong subsequently discovered that she had to continue paying the premiums for the seven policies.

[6] Madam Wong also lodged a police report against the plaintiff on 4 June 2013.

[7] Upon receipt of Madam Wong's complaint, GE suspended the plaintiff as an agent. GE also simultaneously suspended the payment of the commissions, overriding commissions and benefits due to the plaintiff from June 2013.

[8] GE wrote a letter dated 19 June 2013 and 4 July 2013 to the plaintiff requesting for full written explanation in respect of the complaint. On 19 July 2013, GE received a written explanation from the plaintiff, which basically denied the complaint but admitted Madam Wong bought the seven policies for her daughters with premiums of RM410,000 and Madam Wong had transferred a sum of RM400,00 into his account for 'investment'.

[9] On 30 July 2013, the plaintiff was called in to GE's head office for an interview in respect of the complaint made by Madam Wong.

[10] At the conclusion of the inquiry, GE made a decision to terminate the plaintiff's agency through a termination notice dated 8 January 2014. The termination took effect on 15 January 2014. By virtue of the agency agreement being terminated, the plaintiff's appointments as Unit Sales Manager and Life Insurance Advisor were also terminated.

[11] Concurrent to GE's inquiry about Madam Wong's complaint, the plaintiff was also investigated and charged in the criminal court based on the police report lodged by Madam Wong. The plaintiff was convicted by the Kuala Lumpur Sessions Court on 20 February 2014. The conviction was affirmed by the High Court but the plaintiff appealed to the Court of Appeal and on 15 May 2015, he was acquitted by the Court of Appeal.

[12] The plaintiff claimed that as a result of the unlawful action of GE in terminating the agency agreement and its refusal to pay the plaintiff the commissions, overriding commissions and benefits due to him under the agency agreement before and after the alleged wrongful termination, the plaintiff suffered loss and damages including but not limited to loss of income, reputation and mental anguish.

[13] After being acquitted by the Court of Appeal, the plaintiff wrote a letter to the Chief Executive Officer of GE seeking for his agency status to be reinstated. However, GE maintained its decision to terminate the plaintiff's agency hence the filing of the present suit.

THE RELIEFS PRAYED FOR

[14] To better appreciate the case of the plaintiff, the full reliefs claimed as they appear at para 24 of the statement of claim are reproduced as follows:

(a) all commissions, overriding commissions and benefits due and payable from June 2013 to 15 January 2014 on the policies secured by the plaintiff and which was inforce;

(b) all commissions, overriding commissions and benefits due and payable on the policies secured by the plaintiff that were inforce as at 15 January 2014 and which remained inforce thereafter;

(c) a statement of account of all insurance policies effected and issued by GE through the agency of the plaintiff that was effective as at 15 January 2014 for which commissions, overriding commissions and benefits were

payable on all policies inforce after 15 January 2014 and still remaining unexpired, in accordance with the Schedule of Commission under the agency agreement;

(d) general damages for mental anguish and financial distress;

(e) exemplary and/or aggravated damages;

(f) interest of 5%pa from June 2013 until full realisation; and

(g) costs.

TRIAL

[15] The trial of this action was held for four days on 18 June 2020, 30 July 2020, 6 August 2020 and 1 October 2020. During the course of the trial, four witnesses were called to testify. The witnesses are:

(a) PW1: Tee Wei Chiang, the plaintiff;

(b) PW2: Lee Yoke Kuew, former immediate officer of the plaintiff and a serving agent at GE, holding the designation of Group Sales Manager;

(c) DW1: Thian Yaa Fang, ex-investigating officer of GE; and

(d) DW2: Helen Quat, Head of Compliance of GE.

ISSUES TO BE TRIED

[16] The issues that have been identified requiring to be tried are as follows:

(i) whether the plaintiff has breached the terms of the agency agreement or the Code of Ethics and Conduct in dealing with Madam Wong which may result in the termination of the plaintiff's agency agreement?

(ii) if the answer to issue (i) is yes, whether GE's decision to suspend the plaintiff and the payment of the commissions, overriding commissions and benefits due to the plaintiff from June 2013 were made on unproven allegations of Madam Wong and without giving full credence to the plaintiff's version of events;

(iii) whether GE has the responsibility to conduct the inquiry/interview with adherence to the principles of natural justice, openness and fairness. If the answer is yes, whether the inquiry/interview has been conducted in such a way;

(iv) whether the termination of the agency agreement by GE for the reasons stated in the notice dated 8 January 2014 is lawful; and

(v) if the court finds that the termination is unlawful, whether the plaintiff is entitled for the reliefs sought.

A ANALYSIS OF THE COURT

The contention of parties

B **[17]** It was the case of the plaintiff that the handling of the complaint by Madam Wong by GE was impartial, one sided and defective. The consequence of which, GE was being grossly unfair, biased towards the complainant Madam Wong with the objective of victimizing the plaintiff. Conversely, the plaintiff was described as an innocent, hardworking and diligent agent who was very successful. The allegations by Madam Wong was all but Madam Wong's own C dissatisfaction with the personal arrangement between the plaintiff and Madam Wong. The arrangements included the payment of approximately RM1.1m to the plaintiff by Madam Wong for the premiums and financial assistance that Madam Wong gave him.

D **[18]** The plaintiff also challenged the interview that GE's Compliance Department had with the plaintiff. It was argued by the plaintiff that the interview was not conducted in fairness in breach of natural justice.

E **[19]** It was suggested that the explanation by the plaintiff in his letter to GE dated 19 July 2013 to Helen Quat, Head of Compliance of GE, ('DW2') was the whole truth. In short he committed no wrong. This contention was backed by the fact that the plaintiff was acquitted by the Court of Appeal of his criminal charges. Thus, he was therefore absolved of any blame or wrong doing. F The plaintiff urged this court to agree with him that he did no wrong. The obvious consequence of the plaintiff's contention is that he must be entitled to the reliefs as prayed in the suit.

[20] GE on the other hand contended that they were fully entitled to take G action against the plaintiff. This included the suspension, termination and the withholding of any commission due to the plaintiff. GE contended that their action was premised on the agency agreement which allowed them to terminate and withhold any commission once a breach of the agency agreement is proven to their satisfaction. It was contended that the termination of the agency H agreement can be made by mutual consent or at the election of either party. If the termination was based on factors such as gross misconduct, fraud, deceit or breach of trust, then as a consequence, the plaintiff is not entitled to any commission and payment.

I **[21]** GE also contended that they conducted the relevant investigations over the complaint of Madam Wong by interviewing her and carrying out investigations in accordance with their standard practice. This included carrying out phone surveys and conducting a check of all the policies that the plaintiff sold in the past. This was apart from the other information that the

Compliance Department obtained from the daughter of Madam Wong which included an audio recording of a conversation between Madam Wong, her daughter and the plaintiff. However, no such recording was produced in court.

The inquiry/interview

[22] The first particulars of breach pleaded against GE is an attack on the admissibility of the interview statement.

[23] The plaintiff argued that GE failed to adhere to the principles of natural justice, openness, fairness and using intimidation to force an admission of guilt in terminating the plaintiff's agency during the course of the interview.

[24] The contents of the interview statement were heavily disputed by the plaintiff as it contained admissions which were detrimental to him. This therefore formed the bedrock of the plaintiff's case where it was argued that GE wrongly used the contents of the interview statement as the foundation to terminate the plaintiff as an agent of GE.

[25] It is therefore important for this court to assess the plaintiff's complaint on how the interview was conducted. Reference is made to the interview statement itself as it was the contemporaneous document that was signed by the plaintiff immediately after the said interview. The transcribed statement is marked as 'B11'.

[26] A general observation of the statement would show that the interview was recorded by Thian Ya Fang who was GE's first witness ('DW1'). It was recorded by hand by DW1 on a form marked as 'GREAT EASTERN ASSURANCE (MALAYSIA) BERHAD INTERVIEW STATEMENT'. The first page had boxes for recording the preliminary information of the interview. At the bottom of the said form were signature panels for the interviewee, recording officer and a witness. The interview was recorded to have started at 2.50pm and ended at 5.40pm.

[27] It was pleaded by the plaintiff in his statement of claim that the person who recorded the interview subjected the plaintiff to 'harassment, persistently pressured questioning and accusation of wrong. The Compliance Officer of GE repeatedly requested the plaintiff to admit to all the allegations levelled against him by Madam Wong Ko Fong'. This court embarked on a careful consideration of the plaintiff's allegation against the evidence presented during trial.

[28] During the course of the trial, both GE's witnesses were cross-examined extensively by counsel for the plaintiff, Mr Godfrey D'Cruz. His questions

were directed to the manner the interview was carried out. He challenged both witnesses as to whether the plaintiff was given the opportunity to understand what was recorded. It was put to the witnesses that the interview was carried out unfairly. It was also the suggestion of counsel that what was recorded by DW1 was something that the plaintiff did not understand. This was because the questions were asked in Mandarin while the answers were recorded in English.

[29] The witnesses for GE denied all the allegations levelled against them.

[30] The transcribed interview statement was marked as B11. But for some minor corrections, the transcribed statement was accepted by both parties. The transcribed interview statement is reproduced for convenience.

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GREAT EASTERN LIFE ASSURANCE (MALAYSIA) BERHAD
INTERVIEW STATEMENT

NATURE OF COMPLAINT (JENIS ADUAN):

☑ MISAPPROPRIATION OF PREMIUM
SIGNATURE FORGERY

☐ MISREPRESENTATION OF FACTS
OTHER:_____

POLICY DETAILS (MAKLUMAT POLISI): PCT-P0414442-KL PCT-P041720-KL		
POLICY NO *NO. POLISI*	:	1010811633,1010105123, 1011581276, 1013962868, 1010811794 1011101798, 1010580549, 1011107269
REF NO *NO. RUJUKAN*	:	tyf/com (invg) 2013/06/06

STATEMENT OF (PERCAKAPAN):

☑ POLICYHOLDER/PEMEGANG POLISI
AGENT/EJEN (IAC: 6020019)
OTHERS:_____

DETAILS OF INTERVIEWEE (MAKLUMAT ORANG YANG DITEMURAMAH):

NAME *NAMA*	:	Tee Wei Chiang.				
CONTACT NO *NO TELEFON:*	**MOBILE** *TEL BIMBIT*	:	0126655546.	**HOUSE** *RUMAH*	:	-
	OFFICE TEL NO *NO TEL PEJABAT*	:	-	**EMAIL** *EMEL*	:	-

RECORDED BY (DIRAKAM OLEH):

NAME *NAMA*	:	Thian Yaa Fang.	**TIME START** *MASA MULA*	:	2.50pm
DATE *TARIKH*	:	30/07/2013.	**TIME END** *MASA HABIS*	:	5.45pm
ATTENDEES *ORANG YANG HADIR*	:	Thian Yaa Fang, Menaha, Tee Wei Chiang.	**LOCATION** *TEMPAT*	:	813.

CONSENT FOR THE INTERVIEW TO BE AUDIO RECORDED (KEBENARAN UNTUK TEMURAMAH DIRAKAM SECARA AUDIO)

☐ **I HEREBY GIVE CONSENT FOR THIS INTERVIEW TO BE AUDIO RECORDED.**
SAYA DENGAN INI MEMBERI KEBENARAN SUPAYA TEMURAMAH INI DIRAKAMKAN SECARA AUDIO.

☑ **I DO NOT AGREE FOR THIS INTERVIEW TO BE AUDIO RECORDED.**
SAYA TIDAK BERSETUJU UNTUK TEMURAMAH INI DIRAKAMKAN SECARA AUDIO.

NAME OF INTERVIEWEE *NAMA ORANG YANG DITEMURAMAH*	:	Tee Wei Chiang
SIGNATURE OF INTERVIEWEE TANDATANGAN ORANG YANG DITEMURAMAH	:	

I HEREBY DECLARE AND CONFIRM THAT I'M GIVING THIS STATEMENT VOLUNTARILY. I HAVE NOT BEEN THREATENED, FORCED, PROMISED OR INDUCED TO GIVE THIS STATEMENT.
SAYA DENGAN INI MENGAKU DAN MENGESAHKAN BAHAWA SAYA MEMBERI KETERANGAN DALAM PERCAKAPAN INI DENGAN SUKARELA. SAYA TIDAK DIUGUT, DIPAKSA ATAU DIBERIKAN APA-APA PERJANJIAN ATAU DAYA TARIKAN UNTUK MEMBUAT KETERANGAN DALAM PERCAKAPAN INI.

1 → Wong Kok Foong (Policyholder—PH).
2 → I know the PH from her daughter, Low Louise and LL mentioned that her mother (PH has
3 purchased insurance from ING and LL agreed to introduce PH to me.
4 →During that point of time, the Company just launched Great ~~Treasure~~ Cash Wonder and

SIGNATURE OF INTERVIEWEE *TANDATANGAN ORANG YANG DITEMURAMAH*	**SIGNATURE OF RECORDING OFFICER** *TANDATANGAN PEGAWAI PERAKAM*	**SIGNATURE OF WITNESS** *TANDATANGAN SAKSI*
Tee Wei Chiang 850904 10 5379 30/7/2013 602001-9	Thian Yaa Fang 30/07/2013	30/7/13

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GREAT EASTERN LIFE ASSURANCE (MALAYSIA) BERHAD
INTERVIEW STATEMENT

Great Cash Gain
~~— (uncertain on the product name).~~ Hence, LL had introduced PH to me.
→As I understand PH needs short-term savings plan and thus, I only introduced Great Cash Wonder and Great Cash Gain to PH.
→ From September 2011 to May 2012, I've introduced a total of 8 policies (P/N: 1011962868, 1010811794, 10107158, 1010580549, 1011962850, 1011017247, 1010811613 and 1010545123) to PH and her daughters (Low Lucille and Low Louise).
→ I confirmed that all Proposal Forms were signed by the respective ~~life~~ lives assured and I've gone through all the questionnaires with the lives assured.
→ I presented to PH and her daughters that they would obtain survival benefits from second year onwards. In addition, upon maturity of the policies, lives assured would obtain maturity benefits and accumulated cash bonus. I've informed PH and lives assured that the payment term of the policies/plans are 5 years (Great Cash Wonder) and 20 years (Great Cash Gain).
→ I used GELSIS to present the plan. I've also explained the plan's benefits and features e.g. sum assured, payment terms, survival benefit and cash bonus to the PH again ^ When I deliver proxy contract
→ I confirm that the Policy Acknowledgment Slips were signed by lives assured. I was not aware that the Slips were not submitted to the Company as I've submitted to my agency office.
→ The PH is not able to pay for the second year premium due to financial difficulty despite I've reminded PH to make payment.
→ I've informed PH that the ~~policy~~ policies would lapse if no payment and PH would suffer losses if PH wasn't to surrender the policies.
→ I introduced OACM Policies (P/N: PCT-P041720-KL, PCT-P0414442-KL) to PH as the Premiums are cheaper. The policies are personal accident plan.
→ I did not propose PH/lives assured to attach riders to GELM's policies as the premium is expenses. OACM's policies are RM100 for RM100K of sum assured.
→ ~~Ltol~~ PH had purchased a total of three OACM policies from me.
→ I'm not OACM agent and I'm a sub-agent of Chew Leng Soon. (CLS)
→ CLS is not same agency group with me but I know him and I would pass ~~on~~ all general insurance cases to him. CLS would pay me 8% of commission and he would bank-in to me on month basis.
→ Actually, this practice (sub-agency) is quite common in our agency group.

SIGNATURE OF INTERVIEWEE *TANDATANGAN ORANG YANG DITEMURAMAH* Tee Wei Chiang 850904 10 5379 30/7/2013 602001-9	SIGNATURE OF RECORDING OFFICER *TANDATANGAN PEGAWAI PERAKAM* Thian Yaa Fang 30/07/2013	SIGNATURE OF WITNESS *TANDATANGAN SAKSI* 30/7/13

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GREAT EASTERN LIFE ASSURANCE (MALAYSIA) BERHAD
INTERVIEW STATEMENT

→ For the e-partner print out which I had sent to Low Louise on 20/05/2013 was drafted by me by using Microsoft Office.
→ Actually I've seen one ex-agent did the ~~documend~~ document and thus, I've use the same template to copy and paste and amend the information (details therein.
→ I admitted that I've drafted/prepared/amended the e-partner printout.
→ I could not explain why the information stated therein were wrong.
→ I wish to explain that it was PH requested me to send the printout ~~t~~ for her and this was my second time that I've sent to her. The first document was different version.
→ I've borrowed a total of RM1.1 million of friendly loan from PH in three occasions in 2012 ie: RM300K in March 2012, RM400K ~~on~~ in April 2012 and another RM400K in February 2012.
→ For the RM400K that I borrowed in February 2012 as a friendly loan, I informed PH that – the monies are use for my own business, the loan duration is one-year and we promised/agreed that the loan interest is more than 10%.
→ In June 2012, ~~I've applied for OACM policies (PCT—P0414442-KL & PCT—P0417260-KL) for Low Louise and Low Lucille~~. However, PH ~~wants to~~ wanted me to pay back the monies (RM400K) for her but I'm not able to make the repayment immediately. Henceforth, I informed PH that I've invested the monies of RM400K ~~to secure~~ to OACM.
→ I therefore requested the lives assured, Low Louise and Low Lucille to sign the Proposal Forms dated 21/06/2012 for Policies (PCT-P0417260-KL and PCT-P0414442-KL) to indicate his investment on the OACM's investment plans. This is also to provide secure to PH and to prevent PH to request repayment from me.
→ PH and the live assured are not aware that I've applied the OACM policies (PCT—P0417266-KL and PCT—P0414442-KL) for them.
→ I admitted that I've misled them and informed them that the premium amount stated to the Debit Notes dated 30/06/2012 and 11/07/2012 are the fees paid by the Company. The fees including policy fees and administrative charges.
→ I informed PH that the monies of RM600K are to help me to achieve my target. The target is my (LIA—Life Insurance Advisor)'s sales target (PCT—P0376642-KL).
For the friendly loan of RM300K which I've borrowed from PH in March 2012, I've fully settled and I've also approved an OACM policy for Low Lucille.
→ I wish to highlight that I am uncertain on the date of my second friendly loan (RM300K). However, I remember it was around March 2012.

SIGNATURE OF INTERVIEWEE *TANDATANGAN ORANG YANG DITEMURAMAH* Tee Wei Chiang 850904 10 5379 30/7/2013 602001-9	SIGNATURE OF RECORDING OFFICER *TANDATANGAN PEGAWAI PERAKAM* Thian Yaa Fang 30/07/2013	SIGNATURE OF WITNESS *TANDATANGAN SAKSI* 30/7/13

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GREAT EASTERN LIFE ASSURANCE (MALAYSIA) BERHAD
INTERVIEW STATEMENT

→ In April 2012, I've requested ~~PH to~~ RM400K of friendly loan from PH where she had banked in to me on 16/04/2012. Both of us agreed the the loan interest is 21%.
→ In April 2013, I've paid MR100K of loan interest to PH.
~~→ Subsequently, PH wanted to withdraw the money of RM400K. However, I am not able to repay the money.~~
→ The reason of me to apply a policy (P/N: 1011581276) for PH is to prevent PH Goes to GELM to check on her policy status.
→ The loan amount of RM100K has been used by me ~~to invest in~~ for my personal ~~inve~~ investment.
→ Subsequently, PH requested me to repay the personal loan where I'm not able to make the repayment.
→ Hence, I've produced the e-partner printout to explain to PH that I've used the money to invest in GELM's policy (P/N: 191581276) and the – plan's name is New Premier account. I've told PH that the total premium of the plan is RM500K and RM100K is my own money.
→ In addition, I also informed PH that the plan is required for one time off payment and the plan would be expired on 23/02/2014.
→ I did not explain the plan's benefit and features to PH.
→ PH is aware of the existence of the plan but she was made to understand that the said plan is a short term investment plan. (P/N: 1011581276).
→ I admitted that all statements recorded by PH is my ~~voice and~~ statements.
→ I also admitted to have informed PH that the seven policies (P/NL 1011962868, 1010811790, 1011017158, 1010580549, 1011017247, 1010811613 and 1010545123) are required for one time off payment. The reason being is I was threatened by PH.
→ I've informed PH that the Automatic Premium Loan (APL) is an option loan offered by the Company as I dare not informed Ph that the policies would lapse due to non-payment.
→ I've also admitted to inform PH that the plan are savings plan that come with Free insurance coverage.
→ However, I wish to clarify that I did not inform PH and the lives assured that the seven policies only required for one off payment only during my point of sales.
→ It was because I was threatened by PH and this, I've changed my presentation

SIGNATURE OF INTERVIEWEE *TANDATANGAN ORANG YANG DITEMURAMAH* Tee Wei Chiang 850904 10 5379 30/7/2013 602001-9	SIGNATURE OF RECORDING OFFICER *TANDATANGAN PEGAWAI PERAKAM* Thian Yaa Fang 30/07/2013	SIGNATURE OF WITNESS *TANDATANGAN SAKSI* 30/7/13

[31] This court makes two observations from the said interview statement.

The flow and content of the interview statement

[32] The interview statement contained a first-hand account of how the dealings between the plaintiff and Madam Wong (identified as policy holder — PH) were carried out. It was recorded in a manner which provided a narration of facts and events that suggested that it was based on a series of questions. It is the view of this court that to procure answers in the fashion that was recorded

by DW2 could only be done as a result of answers given out by the plaintiff himself. It is difficult to accept that such a coherent statement was obtained as a result of 'harassment, persistent pressure, questioning and accusation of wrong' as pleaded by the plaintiff.

[33] Not all of the interview statement contents contained admissions which incriminated the plaintiff. It also contained explanations by the plaintiff on matters which related to facts which was not the basis of GE's finding against the plaintiff. One such example is on the explanation that there was a personal arrangement between the plaintiff and Madam Wong that saw Madam Wong granting him a personal loan amounting to RM1.1m. This did not form any of the grounds for his termination. Thus, to suggest that the statement cannot be relied upon by this court is an extreme position that this court would be very cautious in taking.

[34] From a reading of the statement and having the opportunity to evaluate the responses given by DW1 and DW2 during cross-examination, it is difficult for this court to believe the version put forward by the plaintiff. On the contrary, DW1 by her own character is a soft spoken person who was at all times more concerned about committing any errors in answering the questions posed to the extent that many of her responses were non-committal answers often layered with 'I cannot remember', much to the annoyance of counsel for the plaintiff.

[35] DW1 cannot to the mind of this court be capable of intimidating and pressuring the plaintiff. The allegations levelled against the GE witnesses were calculated to convince this court that the entire process was conducted high handedly akin to an interrogation. The court however, is not convinced by the plaintiff's complaints.

Language

[36] It was also the case of the plaintiff that he was not conversant in English. As such, he complained that he did not understand what he signed at the interview. Therefore, he cannot be held for what is stated in the interview statement.

[37] As an experienced agent of GE, having started his career as an agent as early as 2004, it boggles the mind of this court that he is unable to understand what is written in English. After all, he claimed that he was a successful agent with many awards under his belt.

[38] He also admitted in court that all marketing and training materials used by GE were only in Bahasa Malaysia and English. The Great Eastern website

which displays the e-Partner page, is also only available in Bahasa Malaysia and English. As an agent, he is also required to attend trainings and seminars. Again, it was part of his attempt to distance himself from the contents of the interview statement.

[39] In this regard, the law is trite when it comes to the obligations of a person who signs a document in the absence of fraud or misrepresentation. The case of *Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & 51 Others* [2006] 1 MLJ 117 explained the trite position as follows:

> [26] ... It has been held that in the absence of fraud or misrepresentation, a person is bound by a writing to which he has put his signature, whether he has read its contents or has chosen to have them unread (see *L'Estrange v Graucob* [1934] 2 KB 394; *Serangoon Garden Estate Ltd v Marion Chye* [1959] 1 MLJ 113; *Majumder v AG of Sarawak* [1966] 1 MLJ 41). The defendant is therefore bound by the contract of employment ...

[40] The plaintiff's testimony that he did not understand what was stated in the interview statement is unsupported by any factual basis. The interview statement was a document recorded by DW1 and was contemporaneously signed by the plaintiff.

[41] The value of contemporaneous documents can never be understated. It can be used to test the veracity of a witness's evidence. In *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229; [1979] 1 LNS 119, Chang Min Tat FCJ, in delivering the judgment of the Federal Court observed:

> Nevertheless the learned trial judge expressed himself to be completely satisfied with the veracity of the respondent's witnesses and their evidence. *He purported to come to certain findings of fact on the oral evidence but did not notice or consider that the respondent's oral evidence openly clashed with its contemporaneous documentary evidence. For myself, I would with respect feel somewhat safer to refer to and rely on the acts and deeds of a witness which are contemporaneous with the event and to draw the reasonable inferences from them than to believe his subsequent recollection or version of it, particularly if he is a witness with a purpose of his own to serve and if it did not account for the statements in his documents and writings*. Judicial reception of evidence requires that the oral evidence be critically tested against the whole of the other evidence and the circumstances of the case. Plausibility should never be mistaken for veracity. (Emphasis added.)

[42] It was certainly open to the plaintiff to insist and record his disapproval on the document itself when he signed the said statement. He was after all, given the liberty to disallow the interview session from being recorded and this was duly noted in the interview statement itself. What can be seen however, were his initials at places where words were cancelled out, suggestive of his acquiescence to the changes made by DW1. His failure to make any correction

at the time the interview ended does not support his version that the interview ended at 7.30pm as pleaded in the statement of claim. He could simply have corrected the time stated in the form. It could have been as simple as that.

[43] From the two observations made by this court, it is clear that the plaintiff was tailoring his evidence. He offered no support for the plausibility of his contentions. To the mind of this court, the plaintiff was forced to disavow the interview statement because he was aware that he had admitted to gross misconduct.

[44] It is the case of GE that the plaintiff was not authorised to sell Personal Accident ('PA') policies offered by OACM, an affiliate of GE. PA insurance is an annual policy which provides compensation in the event of injuries, disability or death caused solely by violent, accidental, external and visible events. It is different from life insurance and medical and health insurance. One of the complaints against the plaintiff was him selling two PA policies for RM400,000 to Madam Wong when actual payable premium amounted to merely RM420. In the interview statement, the plaintiff admitted that he was not a PA agent but instead he sold the policies to Madam Wong as a 'sub-agent' to an OACM agent known as Chew Leng Soon. It was explained by him in the interview statement that this was a normal occurrence within his agency. Chew Leng Soon would at the end of every month, transfer the commission to him. An extract of the said interview statement is reproduced as follows:

> – I'm not OACM agent and I'm a sub-agent of Chew Leng Soon. (CLS)
>
> – CLS is not same agency group with me but I know him and I would pass on all general insurance cases to him. CLS would pay me 8% of commission and he would bank-in to me on month basis.
>
> – Actually, this practice (sub-agency) is quite common in our agency group.

[45] An extract of the cross-examination by counsel for GE is reproduced. It reads as:

> AT: Ok. I'm not going to take you through everything because it's there, we can all read, but Mr Tee, there's just a few things. Do you see at page 734, five lines from the bottom, the statement says, 'I'm not OACM agent. Do you see that?
>
> TEE: Yes, I see that.
>
> AT: I am not OACM agent and I am sub-agent of Chew Leng Soon, CLS. CSL is not same agency group with me but I know him and I would pass', and then you initialled, apparently there was a correction, 'all general insurance cases to him. CLS would pay me 8% of commission and he would bank in to me on monthly basis. Actually this practice, sub-agency is quite common in our agency group'. Mr Tee, *I'm putting it to you that this information could have only come from you. Nobody could have invented it*. Do you agree?

TEE: *Yes*. (Emphasis added.)

[46] It is the view of this court that the answers provided by the plaintiff in his interview statement were very precise and could only come from him alone. There is no basis to agree with the contention that the plaintiff was in any manner 'fixed up' by DW1 during the course of the statement recording. It is also baseless to suggest that the answers given by the plaintiff in the interview statement were not his.

[47] As such, the court finds no reason to rule that the contents of the statement did not come from the plaintiff himself. It would be very difficult for anyone apart from the plaintiff to give such a clear account of how the events unfolded. There was no basis to suggest that the interview statement was obtained as a result of 'harassment, persistent pressure, questioning and accusation of wrong' as pleaded by the plaintiff.

Inconsistencies in the plaintiff's case

[48] It is the finding of this court that the complaint by the plaintiff was riddled with inconsistencies. Among the inconsistencies were the identification of who actually carried out the interview. In the statement of claim, he had categorically identified DW2 as the Compliance Officer who recorded the statement. However, in his witness statement marked as WSPW-1, he identified the recording officer as the DW1. He also pleaded in his statement of claim that it was DW2 who asked him to sign the interview statement but in his witness statement, he said it was DW1 who asked him to do so.

[49] The plaintiff went on to explain in detail what DW1 did during the interview. This included the failure of DW1 to read the statement back to him before signing his statement and to explain to him the reasons why amendments of the statement had to be initialed by him. He also stated that DW1 asked him to sign the statement by assuring him by saying 'Don't worry, nothing wrong in signing, it is only internal'.

[50] Discrepancies were also seen in the pleadings and the plaintiff's witness statement when he complained about the manner how he was treated during the interview. In the statement of claim he pleaded that he was deprived of any food or beverages during the course of the interview. However, in his witness statement, he stated he was 'allowed to go down and get my own drinks'.

[51] This court is of the view that the discrepancies were material for this court's determination of the version of events that transpired on the day of the interview. The failure of counsel for the plaintiff to offer an explanation to the court on why such discrepancies occurred did not assist the case of the plaintiff.

The right of GE to terminate

[52] It is important to discuss the termination rights of GE under the agency agreement. It is imperative to note that the relationship between GE and the plaintiff is a contractual relationship. It is not an employer and employee relationship. Therefore, there is no requirement of any domestic inquiry or internal human resource processes to be complied by GE. GE's rights to terminate the agency agreement are contractually provided under the terms of the agency agreement.

[53] The relevant provision in the agency agreement on termination are cll 18 and 20. They read as follows:

> 18. Either party may at any time and without assigning any reason terminate the Agreement by giving not less than 15 days written notice of such intention to the other party. The exercise by the Company of its rights of termination under this Clause shall not disentitle the agent from receiving any commission (individual policies or group schemes (overriding and fringe benefit thereinafter referred to as 'the said Benefits') due to the Agent up to the date of termination and the agent so affected in the manner described herein before shall further be entitled to the renewal commission due on premium actually paid on policies therein after referred to as 'the additional Benefits'). In the year following after the date of such termination PROVIDED ALWAYS that the said Benefits and/or the additional benefit as the case maybe, shall not be payable to the agent if the Agency Agreement has been terminated between the parties by the Agent under this Clause or by the Company for any of the following reasons namely fraud, deceit, breach of trust or gross-misconduct (thereinafter referred to as the said 'wrongs') by the Agent whether acting as a principles or as an abettor in the commission of the said wrongs or if this Agreement has been terminated by the company under any other provision in this Agreements.
>
> 20. The Company shall be entitled to automatically terminate this Agreement by giving 7 days notice in writing to the Agent, if the Agent:
>
> 20.1 Is in breach of any circular of directive issued by the Company pursuant to any Government directive, regulation, rule or statute;
>
> 20.2 Is in breach of any term or condition of this Agreement and/or the prevailing Agency Rules and Regulations;
>
> 20.3 By any act or omission including any breach of law brings this credit to reputation and integrity of the Company or is guilty of any conduct which in the opinion of the Company is prejudicial to the Company's interest;
>
> 20.4 Is adjudicated a bankrupt or enters into or attempts to enter into a compositions or arrangement with his creditors;
>
> 20.5 Becomes totally and permanently disabled or in the opinion of the company from any cause becomes incapable of carrying out the terms of the agency;

> 20.6 Misappropriates any money or payment : in any form made in respect of premium or if he pays or offers to pay as an inducement or otherwise to any proposer for life assurance any rebate or any other form of payment if such rebate of payment is not specified in the policy or if the Agent attempts to do any of the above mentioned acts.

[54] As such, once GE is of the view that the plaintiff committed an act that merits a termination of the agreement, GE is entitled to do so subject to giving the requisite notice period to the agent. In the current case, GE had done so by virtue of the letter dated 8 January 2014.

[55] In the current case, it was explained by DW2 that after carrying out the necessary investigations, GE found that the plaintiff had committed acts which constituted a breach of the Agency Agreement and Agency Rules and Regulations.

THE BREACHES

[56] The following breaches were found to have been committed by the plaintiff.

Tampering of e-Partner printout

[57] The e-Partner is a website built by GE which is accessible by their agents to check amongst others policy information. It is mean to be used by agents to check the status and details of policies taken out by the client of the agents.

[58] Counsel for GE cross-examined the plaintiff with regards to the function of the e-Partner statement:

> Yes? Ok. Because, I mean, you don't attend 30 hours of training, they can also terminate you, so this one is very serious. Alright. Now one, Mr Tee, one of the, I'll just look at one of the allegations. This appears, Mr Tee, in, I would call it No.3, in both letters, it's the third allegation. It refers to a document called an 'e-Partner printout'. Can you explain, Mr Tee, what e-Partner is?
>
> TEE: e-Partner is a Great Eastern website to let agent to log in to check the policy holder details, and some campaign, latest news. All through by this website.
>
> GD: Say that again?
>
> TEE: This Great Eastern, this e-Partner is a Great Eastern website to let agent to log in to check the policy holder details, and then can see the latest campaign or article, or news, upcoming, maybe like, campaign.

[59] In the interview statement, the plaintiff admitted to amending the e-Partner printout using Microsoft Office. An excerpt of the interview

statement at p 3B of B11 states as follows:

> – For the e-partner print out which I had sent to Low Louise on 20/05/2013 was drafted by me by using Microsoft Office.
>
> – Actually I've seen one ex-agent did the document document and thus, I've use the same template to copy and paste and amend the information (details therein).
>
> – I admitted that I've drafted/prepared/amended the e-partner printout.

[60] The e-Partner printout in question was produced by the plaintiff himself for the purpose of this current trial. It was attached as part of the exhibits used during the criminal trial of the plaintiff.

[61] The plaintiff denied this was a printout done by him but he was unable to produce the 'correct' copy of the printout he gave to Madam Wong and her daughters.

[62] The plaintiff had amended the e-Partner printout to include false information and breached cl 20.3 of the Agency Agreement and the Agency Rules and Regulations. It was pointed out by counsel for GE that even on this ground alone, GE could have terminated the plaintiff's agency.

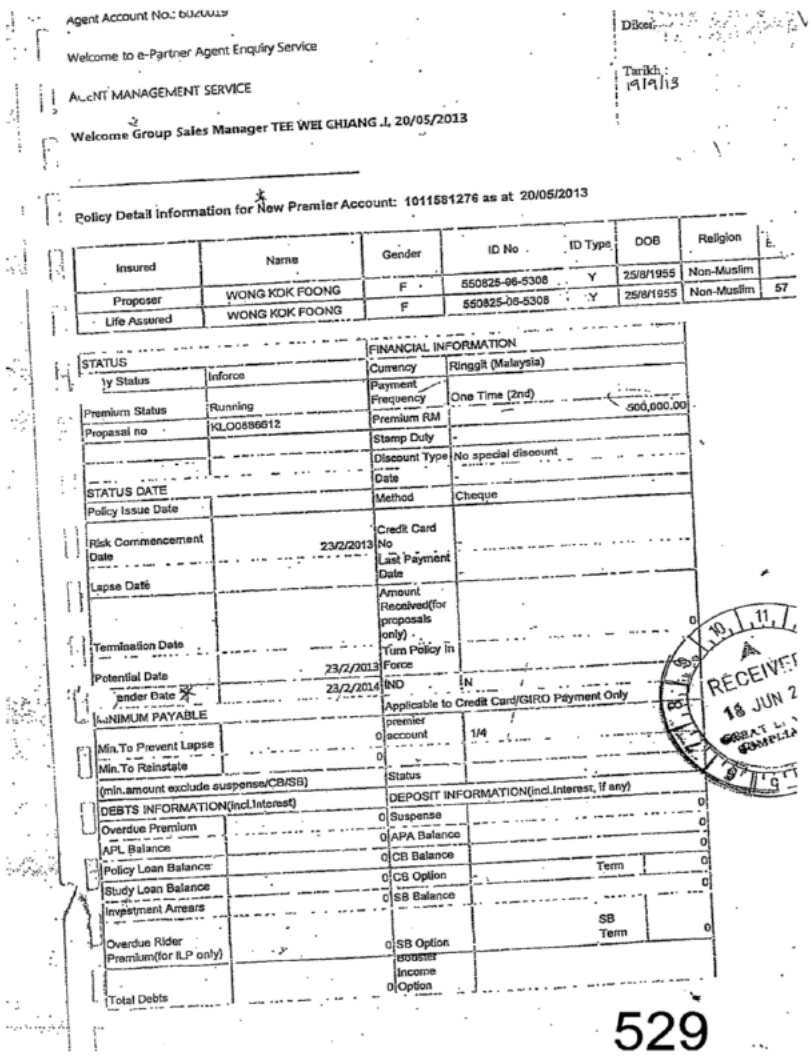
[63] DW2 in her revised witness statement WSDW-2 explained the details of the breach. Reference was made to cl 20 of the Agency Agreement and the Agency Rules and Regulations in bundle 'B4' at pp 707–710 'List of undesirable agency conduct, practices, behaviour, action/omission to be avoided; agency rules & regulations':

No	Misconduct	Breaches
Q&A 11(1)	Tampering of e-Partner printout to provide false information to the policy holder:	Clause 20.3 of Agency Agreement — by any act or omission including any breach of law brings discredit to the reputation and integrity of the Company or is guilty of any conduct which in the opinion of the Company is prejudicial to the Company's interest
	• His agency rank was stated as Group Sales Manager when he was Life Insurance Advisor (LIA) • Payment frequency was stated as one time when Policy 1011581276 is a regular premium policy	Agency Rules & Regulations – Cheating, deception, falsification, forgery – Supply false information.

	• Basic sum assured was RM500,000 but was stated as premium amount • Risk commencement date was stated as 23/3/2013 when the policy was not inforced • Surrender date was stated as 23/2/2014 when the policy could not be surrendered as it is yet to be inforced.	

[64] A copy of the e-Partner statement is reproduced below for ease of reference:

(the remainder of this page is left intentionally blank)



Agent Account No.: 000019

Welcome to e-Partner Agent Enquiry Service

AGENT MANAGEMENT SERVICE

Welcome Group Sales Manager TEE WEI CHIANG .I, 20/05/2013

Diker

Tarikh : 19/9/13

Policy Detail Information for New Premier Account: 1011581276 as at 20/05/2013

Insured	Name	Gender	ID No	ID Type	DOB	Religion	E.
Proposer	WONG KOK FOONG	F	550825-06-5308	Y	25/8/1955	Non-Muslim	
Life Assured	WONG KOK FOONG	F	550825-06-5308	Y	25/8/1955	Non-Muslim	57

STATUS		FINANCIAL INFORMATION	
ly Status	Inforce	Currency	Ringgit (Malaysia)
Premium Status	Running	Payment Frequency	One Time (2nd)
Proposal no	KLO0886612	Premium RM	500,000.00
		Stamp Duty	-
		Discount Type	No special discount
STATUS DATE		Date	-
Policy Issue Date		Method	Cheque
Risk Commencement Date	23/2/2013	Credit Card No	
Lapse Date		Last Payment Date	-
Termination Date		Amount Received(for proposals only)	
Potential Date	23/2/2013	Turn Policy In Force	
ender Date	23/2/2014	IND	N
MINIMUM PAYABLE		Applicable to Credit Card/GIRO Payment Only	
Min.To Prevent Lapse	0	premier account	1/4
Min.To Reinstate	0		
(min.amount exclude suspense/CB/SB)		Status	
DEBTS INFORMATION(incl.Interest)		DEPOSIT INFORMATION(incl.Interest, if any)	
Overdue Premium	0	Suspense	0
APL Balance	0	APA Balance	0
Policy Loan Balance	0	CB Balance	0
Study Loan Balance	0	CB Option	Term 0
Investment Arrears	0	SB Balance	0
Overdue Rider Premium(for ILP only)	0	SB Option	SB Term 0
Total Debts	0	Income Booster Option	

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Cheating and providing misleading statements/ misrepresentation of facts

[65] The plaintiff was found to have provided false information to Madam Wong ie the premiums required to be paid for the seven policies were one-off. In his interview statement, he stated the following at Bundle B11 at p 4B:

– In addition, I also informed PH that the plan is required for one time off payment and the plan would be expired on 23/02/2014.

– I did not explain the plan's benefit and features to PH.

– PH is aware of the existence of the plan but she was made to understand that the said plan is a short term investment plan. (P/N: 1011581276).

– I admitted that all statements recorded by PH is my voice and statements.

– I also admitted to have informed PH that the seven policies (P/NL 1011962868, 1010811790, 1011017158, 1010580549, 1011017247, 1010811613 and 1010545123) are required for one time off payment. The reason being is I was threatened by PH.

– I've informed PH that the Automatic Premium Loan (APL) is an option loan offered by the Company as I dare not informed Ph that the policies would lapse due to non-payment.

– I've also admitted to inform PH that the plan are savings plan that come with Free insurance coverage.

– However, I wish to clarify that I did not inform PH and the lives assured that the seven policies only required for one off payment only during my point of sales.

[66] DW2 in her revised witness statement WSDW-2 identified that this conduct of the plaintiff was a breach of cll 20.1, 20.2 and 20.7 of the Agency Agreement and also the Agency Rules and Regulations found in B4. 'List of undesirable agency conduct, practices, behaviour, action/omission to be avoided; agency rules & regulations':

No	Misconduct	Breaches
Q&A 11(2)	Cheating and providing misleading statements/ misrepresentation of facts, amongst others:	Clause 20.1 of the Agency Agreement — is in breach of any circular or directive issued by the Company pursuant to any Government directive, regulation, rule or statute Clause 20.2 of the Agency Agreement — is in breach of any term or condition of this Agreement and/or prevailing Agency Rules and Regulations
	• The 7 insurance policies for policyholder's daughters are policies with one-time off payment when these are regular payment policies range from 5 to 20 years GE would offer 'free' insurance coverage	Clause 20.7 of the Agency Agreement — makes a representation to any person for the purpose of inducing a policyholder of the Company or any insurance company to convert, lapse or surrender his policy or for any other purpose Agency Rules & Regulations (Page 143-146):

	• Policy holder would obtain 'full refund of premium' upon maturity	– Acting outside authority – Cheating, deception, falsification, forgery – Supply false information
	• Interest rate offered by GE was 25%, better than bank	-Misrepresentation

Overselling/mis-selling

[67] It was also in evidence that the Compliance Department also investigated the policies that were sold by the plaintiff to the daughters of Madam Wong. This was one of the considerations taken into account by GE in assessing the plaintiff's conduct that he had 'oversold' the policies.

[68] This means that the plaintiff had sold policies with premiums or commitments higher than the policyholders' annual income. Based on their investigations, the policyholders will not be able to afford the commitments.

[69] DW2 in her revised witness statement WSDW-2 identified that this conduct of the plaintiff was a breach of cl 20.1 and 20.2 of the Agency Agreement and also the Agency Rules and Regulations found in B4 'List of undesirable agency conduct, practices, behaviour, action/omission to be avoided; agency rules & regulations':

No	Misconduct	Breaches
Q&A 11(3)	Errant Sales Advice — Overselling/ Mis-selling, failure to conduct suitability assessment and improper sales advice	Clause 20.1 of the Agency Agreement — is in breach of any circularor directive issued by the Company pursuant to any Government directive, regulation, rule or statute
	• Overselling of policies to Low Louise and Low Lucille (daughters of policyholder) in that the total premium per annum to be paid by Low Louise and Low Lucille including the 7 policies proposed by the plaintiff was RM155k (97% of Low Louise's earned income declared as property agent) and RM265k (165% of Low Lucille's earned income as property agent) respectively.	Clause 20.2 of the Agency Agreement — is in breach of any term or condition of this Agreement and/or prevailing Agency Rules and Regulations

No	Misconduct	Breaches
	• Failure to conduct suitability assessment where the 7 policies recommended by the plaintiff to Low Louise and Low Lucille required total commitments (for the premium duration from 5 years to 20 years) of RM1.975 million and RM3.475 million respectively. The total commitments were beyond Low Louise's and Low Lucille's means.	Agency Rules & Regulations (Page 143–146): — Failure to the fact find and needs analysis or recommended appropriate plans tailored to client's needs and risk tolerance – Not acting in policyholder's best interest
	• Errant sales advice as the financial assessment was not based on financial standing of Low Louise and	– Overselling or too aggressive selling, customer could not afford it over the longer time horizon or may have other priorities/commitments, or making unrealistic assumptions as to income, economy etc

Soliciting and selling general insurance policies without license

[70] It was determined that the plaintiff did not hold a license to sell general insurance policies but he nevertheless solicited and sold general insurance policies to Madam Wong. In his interview statement at Bundle B11 at p 2B:

– 'I'm not OACM agent and I'm a sub-agent of Chew Leng Soon. (CLS)

– CLS is not same agency group with me but I know him and I would pass on all general insurance cases to him. CLS would pay me 8% of commission and he would bank-in to me on month basis.

– Actually, this practice (sub-agency) is quite common in our agency group.

[71] DW2 in her revised witness statement WSDW-2 identified that this conduct of the plaintiff was a breach of cll 20.1 and 20.2 of the Agency Agreement and also the Agency Rules and Regulations found in B4 'List of undesirable agency conduct, practices, behaviour, action/omission to be avoided; agency rules & regulations':

No	Misconduct	Breaches
Q&A 11(4);	Soliciting and selling of general insurance policies without licence	Clause 20.1 of the Agency Agreement — is in breach of any circular or directive issued by the Company pursuant to any Government directive, regulation, rule or statute Clause 20.2 of the Agency Agreement — is in breach of any term or condition of this Agreement and/or prevailing Agency Rules and Regulations Agency Rules & Regulations (Page 143–146): – Sell without license — soliciting business in prohibited neighbouring jurisdictions/ countries or selling certain products not yet licensed to sell — ILP without CEILI passes

[72] During cross-examination of the plaintiff on this issue by counsel for GE, the following questions and answers were recorded:

> AT: Ok. I'm not going to take you through everything because it's there, we can all read, but Mr Tee, there's just a few things. Do you see at page 734, five lines from the bottom, the statement says, 'I'm not OACM agent. Do you see that?
>
> TEE: Yes, I see that.
>
> AT: I am not OACM agent and I am sub-agent of Chew Leng Soon, CLS. CSL is not same agency group with me but I know him and I would pass', and then you initialled, apparently there was a correction, 'all general insurance cases to him. CLS would pay me 8% of commission and he would bank in to me on monthly basis. Actually this practice, sub-agency is quite common in our agency group'. Mr Tee, I'm putting it to you that this information could have only come from you. Nobody could have invented it. Do you agree?
>
> TEE: Yes.

[73] Counsel also asked PW2, Lee Yoke Kuew, former immediate officer of the plaintiff whether it was permitted for a life insurance agent to sell general insurance policies. The witness agreed that it was wrong to do so. The cross-examination can be seen as follows:

> AT: Ok. Saya bukan tak tanya mengenai Ms Lee ya. Saya bertanya mengenai pengalaman Ms Lee dan pengetahuan Ms Lee. Adakah Ms Lee tahu jika seorang life insurance agent menjual general insurance tanpa mendapat licence, itu adalah kesalahan yang besar. Ms Lee setuju?
>
> LEE: Setuju.

Policy acknowledgment slips

[74] It is also a requirement that an insurance agent has a duty to ensure the policy acknowledgment slips of the policyholders are delivered to GE for record.

[75] However, despite the experience of the plaintiff, he failed to do so. The plaintiff's explanation can be seen at Bundle B11 p 2B:

> I confirm that the Policy Acknowledgment Slips were signed by lives assured. I was not aware that the Slips were not submitted to the Company as I've submitted to my agency office.

[76] DW2 in her witness statement pointed out the breach as follows:

No	Misconduct	Breaches
Q&A 11(5);	Failure to obtain policyholders' signatures in the Policy Acknowledgment Slips	Agency Rules & Regulations (Page 143–146): Poor after-sales service eg non-delivery of policy or bad services when policyholders require

GE was satisfied with the outcome of their investigation

[77] The court was informed that GE was convinced that the plaintiff had committed acts which violated the agency agreement. DW2 went on to inform the court GE was satisfied with the outcome of their investigations on the plaintiff. Based on the internal investigations on the plaintiff's agency history, evidence obtained in the course of the investigation coupled with the plaintiff's interview statement and admissions, they were strong basis to confirm Madam Wong's complaint.

[78] It is the view of this court that GE has the final say when determining there was a breach of the terms of the agency agreement. In this case, this court cannot go beyond what was carried out by GE and their satisfaction on the results of their investigations.

[79] To the mind of this court, GE was convinced that the plaintiff had breached the agency agreement clauses. As such, they were entitled to terminate the agency agreement between them and the plaintiff.

[80] This court does not find any reason to disagree with the plaintiff invoking cl 20.1, 20.2 and 20.3 of the agency agreement. Once there is

satisfaction on the part of GE that the plaintiff had breached the relevant provisions in the agency agreement, they were fully entitled to exercise their rights under the said clauses.

THE ACQUITTAL — ANY RELEVANCE TO THE TERMINATION?

[81] The plaintiff argued that as a result of the acquittal by the Court of Appeal, he no longer had any criminal conviction to his name. He was therefore, entitled to be reinstated as an agent with GE and would be entitled to all the commissions as provided under the agency agreement.

[82] From the facts, it was before this court that the plaintiff wrote to the Chief Executive Officer of GE requesting to be reinstated as an agent of GE and be paid the commission that he felt was due to him. His request was formally rejected by GE vide a letter dated 20 May 2016.

[83] This court finds the argument to be misplaced. It apposite to recall that the termination of the agency agreement was made based on the finding by GE that the plaintiff had breached the agency agreement.

[84] The finding of a breach of the agreement is the all important consideration for GE. In other words, GE no longer found him to be suitable to act as their agent. As such, it does not lie in the mouth of the plaintiff that he must be reinstated as an agent.

[85] It must be reminded that a person becomes an agent of GE upon the parties entering into an agency agreement. If to the assessment of GE that the plaintiff is no longer fit and proper to act as its agent, GE cannot be compelled to re-enter into an agreement with the plaintiff. As such, GE was at all times entitled to refuse any form of contractual relationship in the form of the agency agreement.

[86] It is important to note that the termination of the plaintiff as agent was made on 8 January 2014 while he was only convicted by the Kuala Lumpur Sessions Court on 20 February 2014. GE was obviously not concerned of the status of the plaintiff whether he was convicted or otherwise. The very fact he was subjected to police investigations was serious enough. Such a position taken by GE was not in any manner wrong.

ENTITLEMENT TO COMMISSION

[87] It is the finding of this court that the plaintiff was not entitled to any benefits arising of the agency agreement as his termination was based on

proviso in cl 18 which expressly states that no commission is entitled to be paid if the termination is based on a finding of 'wrongs' by GE. The said proviso reads as follows:

> ... *PROVIDED ALWAYS that the said Benefits and/or the additional benefit as the case maybe, shall not be payable to the agent if the Agency Agreement has been terminated between the parties by the Agent under this Clause or by the Company for any of the following reasons namely fraud, deceit, breach of trust or gross-misconduct* (thereinafter referred to as the said 'wrongs') *by the Agent* whether acting as a principles or as an abettor in the commission of the said wrongs or if this Agreement has been terminated by the company under any other provision in this Agreements. (Emphasis added.)

[88] Based on the express wordings of cl 18, it is patently clear that the plaintiff was not entitled to any payment of commissions. The 'wrongs' as defined in cl 18 reads as 'fraud, deceit, breach of trust or gross misconduct'.

OTHER ISSUES RAISED BY THE PLAINTIFF

[89] It was also an issue raised by the plaintiff during trial that GE was wrong to suspend the plaintiff as an agent even before completing the investigation. This court does not find the issue as something pivotal. GE was entitled to take steps to preserve its position in light of the serious allegations made against the plaintiff. Furthermore, there was a police report that was lodged together with the complaint. It was not an unreasonable action to take.

[90] The insurance industry is heavily regulated by the insurance industry regulator, Bank Negara. GE cannot afford to take the issue lightly especially when agents are persons who interface with members of the public and are in a position of trust. They not only handle private information but also are entrusted with money. It is only right that stern action is taken whenever any such allegations arise.

[91] Be that as it may, the issue of wrongful suspension was not specifically pleaded by the plaintiff in his statement of claim. The plaintiff is therefore not entitled to raise the issue during trial.

[92] The plaintiff has in fact faulted GE for not calling witnesses such as Madam Wong or her daughters. The plaintiff also faulted GE for not producing the investigation report produced by the Compliance Department.

[93] It is the view of the court that such complaints merit no consideration by this court. It is clear that the burden of proof lies with the plaintiff to prove to this court that the termination is unlawful. However, the plaintiff has failed to prove its case on the required standard of a balance of probabilities. It is trite

that GE has no duty to supplement the case of the plaintiff. GE on the other hand, was able to rebut the contention of the plaintiff.

CREDIBILITY OF THE WITNESSES

[94] During the course of the trial, this court had the opportunity to observe the demeanor of all the witnesses. This included the two GE witnesses. DW1 was assigned to investigate the complaint by Madam Wong sometime in June 2013.However, she left GE in September 2013, before the final determination against the plaintiff was made. As she was no longer an employee of GE, she had to be subpoenad by GE. During the course of the trial, she repeatedly said that she could not remember specific events or actions as it had been seven years since she left GE and the file against the plaintiff.

[95] As mentioned earlier, DW1 was a very careful and cautious witness. This led her to answer 'I cannot remember' on questions that she was unsure of. However, she was not a timorous person. This was seen from her answers during cross-examination by counsel for the plaintiff. She was not a person who would not easily agree to answers where she was certain. This court was particularly impressed with her firm answer when she was pressured by counsel in responding to how to treat answers recorded during an interview. There is no reason for this court to doubt the truthfulness of DW1.

[96] DW2 was a long serving employee of GE. She rose through the ranks in GE and at the time of her testing in court, she was the Head of the Compliance Department. She was assertive and knew the area of her work well. The cross-examination did not manage to shake her. She was able to explain the breaches committed by the plaintiff. She explained that the dismissal of the plaintiff was based on an overall assessment of their investigations. This included instigative results such as interviews with Madam Wong, additional materials received from her daughters, random calls to policy holders and a check on the policies sold by the plaintiff to other customers. She was able to stand up to all the questions with regards to the basis of termination which was crucial to GE and its case.

[97] This court does not find any reason for the two witnesses to concoct or fabricate any outcome of the investigation against the plaintiff. This court too, does not find any reason to disbelief the two witnesses when they were on the stand. To the mind of this court, they were credible witnesses.

[98] On the other hand, it is this court's finding that the evidence given by the plaintiff with regards to the version of events that transpired during the interview were tainted by inconsistencies and self-serving statements. The plaintiff had an axe to grind against GE. He was trying his best to portray the

GE employees who handled his case as persons who were out to ensure that he was guilty of the allegations made against him.

ANSWERS TO THE ISSUES TO BE TRIED

[99] In the final analysis, this court finds the issues to be tried ought to be answered in the following manner:

(i) whether the plaintiff has breached the terms of the agency agreement or the Code of Ethics and Conduct in dealing with Madam Wong which may result in the termination of the plaintiff's tenancy agreement?

Answer: Yes.

(ii) if the answer to issue (i) is yes, whether GE's decision to suspend the plaintiff and the payment of the commissions, overriding commissions and benefits due to the plaintiff from June 2013 were made on unproven allegations of Madam Wong and without giving full credence to the plaintiff's version of events?

Answer: No.

(iii) whether GE has the responsibility to conduct the inquiry/interview with adherence to the principles of natural justice, openness and fairness. If the answer is yes, whether the inquiry/interview has been conducted in such a way?

Answer: No, but the interview did not breach any legal or procedural provisions.

(iv) whether the termination of the agency agreement by GE for the reasons stated in the notice dated 8 January 2014 is lawful? and

Answer: Yes, the termination was lawful.

(v) if the court finds that the termination is unlawful, whether the plaintiff is entitled for the reliefs sought?

No answer required.

CONCLUSION

[100] It is the finding of this court that the plaintiff has failed to establish a case on a balance of probabilities against GE. It follows none of the remedies prayed for by the plaintiff is allowed.

[101] In the foregoing, the claim by the plaintiff is dismissed with costs of RM35,000.

Plaintiff's claim dismissed with costs.

Reported by K Selvaraju